

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DANIEL LOPEZ, ) Case No. 4:07CV3198  
 )  
 Plaintiff, )  
 )  
 v. ) MEMORANDUM AND ORDER  
 )  
 CITY OF NORFOLK, et al., )  
 )  
 Defendants. )

This matter is before the court on its own motion. Pursuant to the Prison Litigation Reform Act ("PLRA"), an imprisoned civil plaintiff must pay the court's entire filing fee, either at the outset when filing the complaint, or in installments if the court grants leave to proceed in forma pauperis ("IFP"). In this case, Plaintiff was granted leave to proceed IFP on September 12, 2007, and the court assessed an initial partial filing fee in the amount of \$17.95 to be paid by October 12, 2007. (Filing 9.) This deadline has now passed and Plaintiff failed to pay the initial partial filing fee.

On October 29, 2007, however, Plaintiff filed a motion to dismiss without prejudice. (Filing 10.) Because the motion also requests that the court (1) direct officials at Plaintiff's institution to stop collecting monthly installment payments for the filing fee<sup>1</sup> and (2) give Plaintiff an undetermined amount of time to pay the filing fee, the motion to dismiss will be denied and Plaintiff will be required to show cause why this case should not be dismissed for failure to pay the initial partial filing fee pursuant to the court's previous order.

Absent a sufficient response, the case will be subject to dismissal, without prejudice, for lack of prosecution in light of the failure to pay the initial partial filing fee by the court-ordered deadline. See NECivR 41.1, which states in pertinent part: "At any time when it appears that any action is not being prosecuted with reasonable diligence the court may dismiss it for lack of prosecution."

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<sup>1</sup> Plaintiff's institution has been ordered to collect monthly payments after the initial partial filing fee is paid by Plaintiff.

IT IS ORDERED:

1. Plaintiff's motion to dismiss (filing 10) is denied.
2. By **November 29, 2007**, Plaintiff shall file a document entitled "Response to Order to Show Cause", explaining any reason Plaintiff may have why the above-entitled case should not be dismissed without prejudice for lack of prosecution;
3. That in the absence of cause shown by the deadline stated above, this case will be subject, without further notice, to dismissal without prejudice.
4. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: "November 29, 2007: show cause deadline for failure to pay initial filing fee".

DATED this 30th day of October, 2007.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge